

# Southern Retail Systems Limited trading as Fresh Food Labels ("the seller") Terms and Conditions of Sale

**1. THE SELLERS CONDITIONS TO PREVAIL:** Unless expressly agreed in writing all goods sold or services supplied by the seller are subject to the following terms and conditions of sale.

**2. PRICE:** All quotations supplied are based on current costs and are subject to adjustment either before, on or after acceptance to meet any recognised increases of such costs. The seller also reserves the right to renegotiate sales orders and contracts at any time due to unforeseen circumstances including fluctuations in raw material prices, foreign currencies and taxes. All prices are subject to VAT where applicable.

**3. PAYMENT:** Where credit has been allowed payments are due strictly within 30 days from date of invoice. Credit will only be allowed and based upon receipt of satisfactory credit information/ratings obtained by the Seller from a recognised credit agency. Should for any reason the credit rating be reduced by the credit agency or the seller becomes concerned as to the buyers creditworthiness and withdraws the credit facility, the buyer accepts that such credit terms can be removed and that all monies outstanding will become immediately payable. Late payments will be subject to an interest charge of 5% per annum above the base rate of the Bank of England.

**4. DELIVERY:** Carriage prices include one standard delivery to one UK mainland address unless otherwise agreed. Failure to deliver within the proposed time shall not entitle the buyer to any claim upon the seller by reason of such failure and shall not be sufficient cause for cancellation by the buyer. Special delivery requirements will incur additional charges.

**5. NON DELIVERY, DAMAGE AND LOSS IN TRANSIT:** Any non delivery, damage or loss of goods in transit must be notified to the seller in writing within 3 days of receipt or expected receipt of delivery of goods.

**6. SHORTAGES AND DEFECTIVE PRODUCTS:** The buyer must notify the seller of any shortages or other cause for complaint within 14 days from delivery of goods. In the absence of such notification the buyer is deemed to have accepted the goods. Any claims made shall not constitute grounds for withholding payment or for any right of set off against payments due from the buyer. The seller will either replace shortages or defective products free of charge or provide a relative credit note which will not exceed the value of the goods. Credit notes will only be provided subject to the return of any such defective product.

**7. CONSEQUENTIAL LOSS:** Under no circumstances will the seller accept responsibility for any losses, costs, damages, or expenses, consequential or otherwise whether suffered directly or indirectly by the buyer.

**8. SPECIFICATIONS AND SUITABILITY:** The buyer shall be responsible for the contents of all artwork and design files supplied, any other information supplied to the seller and for any discrepancies, inconsistencies, errors or omissions therein. The suitability of the product is the buyers responsibility and unless specifically confirmed in writing by the seller no warranty or condition is given or implied concerning whether the product is fit for the purpose for which they are to be used.

**9. MATERIALS:** Whilst every effort will be made by the seller to supply material in accordance with the quality submitted or quoted for, this cannot be guaranteed by the seller and no condition to this effect shall be implied.

**10. DESIGN, PRINTING AND SUBSTRATE COLOUR:** The seller will not be held responsible or liable for any errors in proofs which have been approved by the buyer. Any changes required by the buyer that result in additional costs for the seller will result in additional charges being made to the buyer i.e. special tools, sketches, printing plates, artwork etc. Any property provided to the seller will be stored at the buyers risk and is not covered by the sellers insurance. The buyer should arrange insurance for their property whilst held at the sellers and during transit to and from the seller. The buyer will indemnify the seller in respect of third party rights where design is supplied by the seller. Any artwork, designs, printing plates or any other pre-production items supplied by the seller remain the sellers property until purchased by payment thereof by the buyer. In any event any intellectual property rights in such items remain with the seller. Where printing requires heavy ink coverage the seller cannot guarantee 100% colour fastness under certain circumstances. Every endeavour will be made to match print and substrate colours to specification but exact colour matching cannot be guaranteed and therefore all print and substrate colours are subject to the relevant accepted trade standards.

**11. TOLERANCES:** All products are subject to manufacturing tolerances. Every reasonable effort will be made by the seller to supply as close to specification as possible but cannot be guaranteed. Material thickness is subject to a plus or minus 10% tolerance. Sizes are subject to a plus or minus 5% tolerance.

**12. VARIATION IN QUANTITY SUPPLIED:**

The seller shall make every reasonable effort to supply the exact quantity ordered but due to the manufacturing processes involved quantities are subject to a tolerance of plus or minus 10%. In the event of the seller supplying more goods than ordered the buyer shall pay for the excess. In the event of the seller supplying fewer goods than ordered the buyer shall only pay for the quantity supplied and the order will be considered as complete.

**13. CANCELLATIONS AND AMENDMENTS:**

In the absence of any written agreement to the contrary between the seller and the buyer the buyer will not cancel any sales order or contract either in full or in part. Any requested amendments to products outstanding from any sales order or contract, that are not yet manufactured, will be accommodated where possible and any surcharges caused as a result of the amendments will be payable by the buyer.

**14. FORWARD AND LONG TERM CONTRACTS:** The buyer agrees that it is the essence of any contract that forward orders are manufactured by the seller or the sellers' agent without restriction by the buyer. The buyer further agrees that the amount manufactured by the seller or the sellers agent at any one time is entirely down to the discretion of the seller. If the buyer subsequently places time restrictions on the seller to manufacture products contracted for, the seller may at his absolute discretion cancel all current and future deliveries of product contained within that contract and recover from the buyer all costs incurred to date. The buyer agrees that failure to take contract or batch quantities at the appropriate time as agreed in the contract will allow the seller to invoice for the contract or batch quantity forthwith. Any relevant additional handling and storage charges incurred as a result of any such delay will be charged to the buyer.

**15. FORCE MAJEURE:**

a. The due performance of the contract is subject to cancellation or variation by the seller as a result of any default whatsoever on the part of the sellers own suppliers or the sellers inability to secure labour, materials or supplies as a result of any act of god, war, riot or civil disturbance, strike, lockout or any other labour dispute, fire, flood, drought or accident, legislation, requisitioning or other act or order by any government department, council or any other duly constituted authority, or any other cause (whether of the foregoing classes or not) beyond the sellers control. In such event, no liability shall attach to the seller by reason of cancellation or variation of any contract.

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b. Deliveries may be wholly or partially suspended and the time of such suspension added to the original contract in the event of stoppage, delay or interruption of supply during

c. The buyer may dispose of the goods in respect of other products (with or without such additions) the property in those products including the final product is upon such incorporation or use and by that event transferred to the seller and the buyer shall maintain records sufficient to enable the manufactured products and the goods incorporated therein to be identified, measured or otherwise quantified.

e. If the goods or any part thereof whether or not incorporated into other products or used as material for other products are re-sold by the buyer before they have made unconditional payment to the seller as aforesaid the buyer shall in its fiduciary capacity as agent for the seller hold all proceeds of sale in respect thereof in trust for the seller and to be held in a separate bank account to be opened by the buyer for the purposes of receiving only the proceeds of such sales and be accountable to the seller in respect thereof.

f. The buyer hereby assigns to the seller all rights and claims which the buyer may have against its own customers arising from sales to its own customers referred to in sub clause e. above until unconditional payment has been made to the seller in full as aforesaid.

g. If before property in goods has passed to the buyer the buyer is in breach of any payment obligation hereunder or enters into liquidation or suffers a receiver to be appointed the seller may give notice to the buyer terminating the contract whereupon the buyer shall at its own expense redeliver such goods to the seller. In such cases the seller may, with or without previous notice, take possession of and sell goods and in such circumstances are irrevocably authorised to enter the premises on which the goods are situated and remove the same at the buyers' expense.

h. Notwithstanding the provision of this clause, risk in all goods supplied shall pass to the buyer on delivery hereupon and the buyer shall be liable for the insurance of such goods.

No defect or invalidity of any of the above sub clauses (or any part thereof) shall affect the validity of any other sub the delivery period as a result of any of the clauses set out in sub paragraph (a) or any cause whatsoever beyond the control of the seller.

## 16. WARRANTY:

a. Save as expressly provided in these terms and conditions and sub clause b. c. and d. of this clause all warranties, conditions, guarantees or representations, express or implied, statutory or otherwise are hereby excluded, and the seller shall not be liable for any damage, expense or injury of any kind whatsoever, consequential or

which property has not passed hereunder in the ordinary course of its business in principal but only at such time as the buyer has disposed of all goods of the same kind supplied by the seller for which payment in full has already otherwise, arising out of or due to or caused by any defects or deficiencies of any sort in the goods supplied by the seller and whether such defects

or deficiencies are caused by the negligence of the seller or its servants or agents or otherwise.

b. The seller agrees to make good by replacement or to pay to or allow the buyer a reasonable sum, not exceeding in any event the invoice value, for any defects which arise solely from faulty materials or workmanship of the product supplied by the seller.

c. The seller does not exclude its liability for any breach on the part of the seller of any undertaking as to title, quiet possession and freedom of encumbrance which may be implied by section 12 of the Sale of Goods Act 1979.

d. This clause shall not deprive a buyer dealing as a consumer pursuant to section 12 of the unfair Contract Terms Act 1977 of his statutory rights.

e. Without prejudice to sub clause c. and d. of this clause any damages recoverable by the buyer from the seller for breach of contract or negligence shall be limited to the invoice value of the goods.

## 17. RETENTION OF TITLE AND RISK:

a. All goods shall remain the property of the seller until payment in full has been received by the seller.

b. Until such unconditional payment the buyer shall:

i. Keep such goods in its capacity as bailee for the seller and

ii. Store the goods separately and clearly identify the goods so that they can be clearly recognised as the property of the seller clause or any other part of such sub clause.

**18. LIEN:** The seller shall have a general lien on all property belonging to the buyer that is in the possession of the seller in the event of monies being due to the seller from the buyer.

## 19. INSOLVENCY:

a. If the buyer ceases to pay its debts in the ordinary course of business, or cannot pay its debts as they become due, or being a company is deemed to be unable to pay its debts suffers a receiver or administrator to be appointed, or has a winding up petition issued against it, or being a person commits an act of bankruptcy, or has a bankruptcy petition issued against them the seller without prejudice to other remedies shall have the right not to proceed further with the contract or any other work for the buyer and shall be entitled to charge for work already carried out (whether completed or not) and any materials purchased for the

been made.

d. If the buyer incorporates the goods into other products before property has passed (with the addition of its goods or those of others) or uses such goods as material for buyer, such charge to be an immediate debt to them.

b. if the goods are resold by the buyer before they have made unconditional payment to the seller the buyer in its fiduciary capacity as agent for the seller will hold all proceeds of sale in respect thereof in trust for the seller and in a separate bank account to be opened by the buyer for the purpose of receiving only the proceeds of such sales and be accountable to the seller in respect thereof.

c. in the event that the buyers customer has not paid, it is agreed and contracted that the seller is entitled to recover the debt from the buyers customer.

**20. GOVERNING LAW:** These terms and conditions and the contract between the parties shall be governed by and construed in accordance with English law and the parties hereto admit to the non-exclusive jurisdiction of the English Courts. Compensation will be claimed for any late payment of commercial debts as set out in the late payment of commercial debts (interest) Act 1998 or any subsequent variations to this act.

## We hereby agree to the above

Signed \_\_\_\_\_

Print Name \_\_\_\_\_

Position / Title \_\_\_\_\_

Date \_\_\_\_\_